

REMARKS

In the Claims

The claims have been amended to remove multiple dependencies and to add proper claim identifiers in accordance with the restriction and election requirement.

In claim 1, the recitation "in front of" has been replaced with "symmetrically with respect to," in order to claim more precisely a feature of the invention. This recitation is supported in the specification, see for example page 8, lines 5-10 of international application PCT/EP02/14251. No new matter has been added.

In the Restriction Requirement

Applicant elects for prosecution Group I, corresponding to claims 1-31. This election of claims is made without traverse.

In the Election Requirement

Applicant elects for prosecution species A, shown in Figure 1 and corresponding to claims 1-2 and 4-12. This election is made with traverse for the reasons detailed below.

A generic claim is defined at MPEP 806.04(d), which states that "a generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim."

In the instant case, claim 1 is the only independent claims in Group I (see above), and each of claims 2-31 depends from claim 1. Accordingly, claim 1 requires no material element additional to those required by the species claims, and instead each of the species claims must require all the limitations of claim 1. Therefore, claim 1 fully meets the definition of independent claim at MPEP 806.04(d).

The requirement for election is further traversed on the grounds that the various species referred to in the Office Action are simply different embodiments of the same

invention. Applicants have presented a generic invention with a generic claim and set forth a number of embodiments falling within the generic invention. It is submitted that 37 CFR 1.141 points out that distinct inventions may not form a single general inventive concept and may not be claimed in one application. However, the rule states that more than one species of an invention may be specifically claimed in different claims in one application, provided the application also includes an allowable generic claim and all the claims to species in excess of one are written in dependent form or otherwise include all limitations of the generic claim. It is submitted that is precisely the situation in this application. Therefore, the requirement for election is improper.

It is also submitted that searching for each of the species listed by the Examiner would cause no undue burden on the Examiner. MPEP 808.02 defines undue burden as requiring a separate classification of the different species, a separate status in the art, or a different field of search. For example, the specification explains that the embodiment depicted in Fig. 1 may include both the sensor dispositions of Fig. 2 or of Fig. 7. Therefore, searching for the embodiment of Fig. 1 would necessarily require searching for the embodiments of Figs. 2 and of Fig. 7, failing to meet the definition of undue burden.

The Examiner's position set forth in the Action, that Applicant's traversal of this requirement for election on the ground that different embodiments of the same invention are presented may be considered an admission in a subsequent prior art rejection that one species is obvious in view of the other, is believed improper and contrary to law. It is believed clear that Applicant's teaching of equivalency in Applicant's own specification is not available to the Examiner as an admission in a rejection under 35 USCA 103. The equivalence must be disclosed in the prior art. Any disclosure of equivalence in Applicant's specification cannot be used by the Examiner to support his rejection. See *In re Ruff et al.*, 118 USPQ 340. Therefore, this portion of the Action represents an improper use of Applicant's disclosure and Applicant's traversal of this election requirement cannot be used against him in future prosecution of this application.

Conclusion

In view of the amendments and remarks provided herein, Applicant submits that the present application is in condition for examination. Reconsideration of the election requirement is respectfully requested.

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Respectfully submitted,

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